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The Northeast Utilities System

Robert A. Bersak

Assistant Secretary and Assistant General Counsel

October 29, 2008

Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 Fruit Street, Suite 10
Concord, New Hampshire 03301

**Re: *Docket No. DE 08-103, Public Service Company of New Hampshire
Merrimack Station Scrubber Project -- Request for Information***

PSNH Concern Regarding Executive Director's Suspension of Order Letter

Dear Secretary Howland:

PSNH has a concern regarding your letter dated October 27, 2008, whereby the Commission announced that it has determined to suspend its decision pursuant to RSA 541:5 in the above-captioned proceeding pending further consideration of the issues raised in certain motions for rehearing.

Your letter states that the Commission had "received timely filed motions for rehearing of Commission Order No. 24,898 (September 19, 2008) from TransCanada Hydro Northeast, Inc., three commercial ratepayers, Stonyfield Farm, Inc., H & L Instruments, LLC and Great American Dining, Inc (collectively, the Commercial Ratepayers) and Edward M.B. Rolfe."

As PSNH noted in its "Objection to Motion for Rehearing and Reconsideration of Edward M. B. Rolfe" dated October 23, 2008, Mr. Rolfe failed to serve his filing on PSNH, and perhaps on other parties listed on the Commission's official service list. PSNH noted that, "Rule Puc §203.02 mandates that for a filing to be effective, it must be served on parties identified on the Commission's service list." Moreover, PSNH also noted Rule Puc §203.11(c) requires that "Motions for rehearing filed pursuant to RSA 541:3 shall be served by hand, by facsimile or other method such to ensure that they are received by the parties by 4:30 p.m. on the same day as they are filed with the commission."

The Commission addressed this very issue in *Re Connecticut Valley Electric Company*, 88 NHPUC 355 (2003). In that proceeding, the group "Working on Waste" filed a pleading deemed by the Commission to be a motion for rehearing, but failed to serve the parties to that docket on a same day basis. The N.H. Attorney General's Office, on behalf of the Governor's Office of Energy and Community Services (ECS) noted:


ECS notes that Working on Waste (WOW) failed to timely serve the parties to this docket pursuant to N.H. Admin. Rule Puc 202.18(d). This rule requires that the motion be served on all parties on the same day that it is filed with the Commission because the parties have only five days to respond to the Motion. WOW filed the Motion with the Commission on June 23, 2003 and, as indicated in WOW's cover letter filed with the Motion, mailed the Motion to the parties on the same date. ECS and other parties, who join in this Objection, did not receive a copy of the Motion with the attachments until June 26, 2003. WOW's failure to follow the Commission's rules is prejudicial in denying the parties the time to review and meaningfully respond to the Motion within the five-day period prescribed by Rule Puc 204.04(h).^{1,2}

In its Order denying WOW's motion, the Commission stated:

In light of our substantive determinations with respect to the Working on Waste motion, it is not necessary for us to take up the procedural issue raised by ECS in its objection. We note, however, that ECS is correct in its contention that Puc 202.18(d) required Working on Waste to serve any RSA 541:3 rehearing motions so as to cause all other parties to receive such motions on the same day they are filed with the Commission. As ECS correctly points out, this is because Puc 204.04(h) requires objections to rehearing motions to be filed within only five days of such motions. To the extent that Working on Waste failed to comply with the applicable service requirements of Puc 202.18(d), it has also failed to meet the filing requirements set forth in Puc 202.07 that would make its submission effective. This in itself would be sufficient grounds for a determination that Working on Waste has waived its rehearing rights, given that the pleading captioned "Motion to Amend" was the only filing made by Working on Waste during the rehearing period specified in RSA 541:3.³

Due to Mr. Rolfe's failure to comply with Rules Puc §203.02 and §203.11(c), his filing must be deemed ineffective by the Commission. Thus, the reference in your October 27, 2008 letter to Mr. Rolfe's motion as being a "timely filed" motion for rehearing is incorrect.

Sincerely,



Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

¹ "Objection of the Governor's Office of Energy and Community Services to Working on Waste's Motion to Amend Order No. 24,176," June 30, 2003, at fn. 1.

² Note that following the Commission's readoption of its procedural rules in Docket No. DRM 05-077, what was previously Rule Puc 202.18(d) is now Rule Puc 203.11(c), and what was previously Rule Puc 202.07 is now Rule Puc 203.02.

³ *Re CVEC* at 357.

cc: Service List, Docket No. DE 08-103
Douglas L. Patch, Esq.

Copies provided electronically via e-mail where possible. Rules Puc 203.02(a) and 203.11(a)

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FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a)(1)

WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) WITH:

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